

JUDGE'S COPY

copy

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH FIDTLER,

Plaintiff,

v.

PA DEPARTMENT OF CORRECTIONS,
CHARLES STROUP, KAREN RODGERS,
CHARLES MCCLOSKEY,
RAY SMITH,

Defendants

1:CV 01-0955

Civil Action No. _____

NOTICE OF REMOVAL

TO: THE PLAINTIFF, JOSEPH FIDTLER

FILED
HARRISBURG

MAY 30 2001

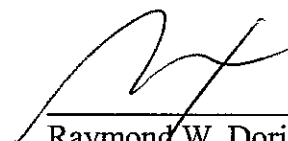
MARY E. D'ANDREA, CLERK
Per 9/15
DEPUTY CLERK

AND NOW, come the Defendants, Pa. Department of Corrections, et al., by and through their attorney, Raymond W. Dorian, Assistant Counsel, and pursuant to 28 U.S.C. §1446, seek to remove to federal court the action previously filed by the Plaintiff in the Court of Common Pleas of Northumberland County to Docket No. CV-01-586. A true and correct copy of the Plaintiff's complaint filed on April 25, 2001 to Docket No. CV-01-586 is attached hereto. The Defendants seek to remove the action, since the Plaintiff's complaint asserts a civil rights action under 42 U.S.C. §1983. Specifically, the Plaintiff contends that he is being deprived of a daily allowance

or idle pay in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Defendants request that this Honorable Court remove the Plaintiff's state court action to federal court pursuant to 28 U.S.C. § 1446.

Respectfully submitted,



Raymond W. Dorian
Assistant Counsel
Attorney I.D. No. 48148

PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: May 30, 2001

IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF NORTHUMBERLAND
____ PENNSYLVANIA ____

OFFICE OF
THE SECRETARY

MAY 01 2001
Randy Sears
REFERRED

JOSEPH FIDLER
Plaintiff

CIVIL ACTION

VS.

PA. DEPT. of CORRECTIONS
CHARLES STRAUP
KAREN ROGERS
CHARLES MCCLOSKEY
RAY SMITH
Defendants

NO. CV-01-586

COMPLAINT TO REDRESS

CONTINUED CLASS BASED ANIMUS
ACTION DEPRIVING PLAINTIFF OF
RIGHTS GUARANTEED BY THE
U.S. CONSTITUTION AND THE
____ CONSTITUTION OF PENNSYLVANIA ____

April 26, 2001
A TRUE AND ATTESTED COPY
Signe Vortie Frick
PROTHONOTARY

FILED
2001 APR 25 PM 3:16
PROTHONOTARY

JURISDICTIONAL STATEMENT

AS PLAINTIFF SEEKS TO VINDICATE RIGHTS PROTECTED BY THE 5TH AND 14TH AMENDMENTS, ARTICLE 1 § 9 CL. 3 TO THE U.S. CONSTITUTION PURSUANT TO 42 U.S.C. § 1983 AND § 1985(3) AS § 1983 SUPPLEMENTS AVAILABLE STATE REMEDIES TO VINDICATE VIOLATIONS OF CONSTITUTIONAL RIGHTS, THIS COURT HAS JURISDICTION OF CIVIL ACTIONS TO DECLARE THE RIGHTS OF PARTIES AND TO GRANT ALL FURTHER RELIEF FOUND NECESSARY AND PROPER.

PARTIES

- 1) PLAINTIFF A MEMBER OF A CLASS CONVICTED INMATES IS A CITIZEN OF THE UNITED STATES PRESENTLY CONFINED AT SCI COAL TOWNSHIP, PA.
- 2) DEFENDANT STROUP, IS THE EDUCATION COUNSEL AT COAL TOWNSHIP, IS SUED IN HIS INDIVIDUAL AND OFFICIAL CAPACITY.
- 3) DEFENDANT ROGERS, WAS ACTING UNIT MANAGER AT COAL TOWNSHIP, IS SUED IN HER INDIVIDUAL AND OFFICIAL CAPACITY.
- 4) DEFENDANT MCCLOSKEY, IS EMPLOYMENT OFFICER AT COAL TOWNSHIP, IS SUED IN HIS INDIVIDUAL AND OFFICIAL CAPACITY.
- DEFENDANT SMITH, IS VOCATIONAL COUNSEL AT COAL TOWNSHIP, IS SUED IN HIS INDIVIDUAL AND OFFICIAL CAPACITY.
- 5) PA. DEPT OF CORRECTIONS IS SUED IN ITS OFFICIAL CAPACITY FOR INDUCTIVE RELIEF.

EACH NAMED DEFENDANT ACTED UNDER COLOR OF STATE LAW.

_____ facts _____

IN ACCORDANCE TO PA. DEPT. OF CORRECTIONS POLICY DC ADM-816-5 INMATES COMPENSATION SYSTEM EFFECTIVE JAN-10 1995 PLAINTIFF WAS ENTITLED TO AN ALLOWANCE BECAUSE "INMATES WHO ARE UNASSIGNED THOUGH NO FAULT OF THEIR OWN SHALL BE GIVEN AN ALLOWANCE IN ACCORDANCE TO THIS POLICY." PLAINTIFF BELIEVES THIS POLICY PROVIDES HIM A PROTECTED DUE PROCESS LIBERTY INTEREST RIGHT UNDER THE 5TH AND 14TH AMENDMENTS.

A RECENTLY ENACTED AMENDMENT TO THIS POLICY — "ANY INMATE REFUSING AN EDUCATION PROGRAM SHALL NOT BE COMPENSATED IN ANY MANNER" IS APPLIED RETROACTIVELY, CHANGING CONSEQUENCES OF ACTS COMPLETED BEFORE ITS EFFECTIVE DATE, WHEREBY DEPRIVING PLAINTIFF OF HIS CONSTITUTIONAL RIGHTS UNDER THE 5TH AND 14TH AMENDMENTS. PLAINTIFF ARRIVED AT THIS PRISON JAN 24, 1994 HE WAS NOT REQUIRED TO PARTICIPATE IN ANY PROGRAMS UNDER THIS POLICY. BY LAW SCHOOL ATTENDANCE IS MANDATORY IF YOU ARE 16 YEARS OLD OR YOUNGER, OR OLDER INMATES WHO READ BELOW 5TH GRADE LEVEL. PLAINTIFF IS 47 YEARS OLD AND READ AT A 10TH GRADE LEVEL. THEREFORE HE IS NOT, BY LAW, REQUIRED TO PARTICIPATE IN PA. DEPT. OF CORRECTIONS SCHOOL PROGRAMS. PLASUANT TO THE ABOVE MENTIONED AMENDMENT, DEFENDANTS ABOVE NAMED ON AUG. 21/2000 INSTIGATED A PLAN TO FORCE PLAINTIFF TO PARTICIPATE IN SCHOOL PROGRAMS AGAINST HIS WILL — STATING "IF PLAINTIFF REFUSE HIS ALLOWANCE WILL BE DISCONTINUED" — ON AUG. 24/2000 DEFENDANT ROGERS, WITHOUT NOTICE OR PREDEPRIVATION HEARING RECOMMENDED THE DISCONTINUATION OF THE ALLOWANCE. DEFENDANT MCLOSKEY, WITHOUT NOTICE OR HEARING DISCONTINUED THE ALLOWANCE. ON SEPT. 5/2000 PLAINTIFF FILED AN OFFICIAL GRIEVANCE, DEFENDANT SMITH GAINED POSSESSION OF THE GRIEVANCE AND

Called Plaintiff to his office and promised to restore the allowance if Plaintiff withdraw the grievance. This meeting with Defendant Smith provided a binding agreement when Plaintiff agreed to the terms of this verbal contract. Defendant Smith disrespected the contract and failed to restore the allowance.

CLAIMS

1) Plaintiff claim the Pa. Dept. of Corrections Policy DC-ADM 816-5 as amended is unconstitutional under Article 1 §9 Cl 13¹ that "no ex post facto law shall be passed," prohibits the Dept. of Corrections from enacting policy that applies retrospectively if it changes consequences of acts completed before its effective date. The offending amendment deprives Plaintiff of his due process liberty protected right — the right to rely on the legally imposed sentence — the enhancement of a sentence that does not stipulate or recommend participation in prison programs. Because substantive personal liberty right to choose what activities to engage in can only be infringed by restrictions that are not tantamount to punishment under the 5th and 14th Amendments. Plaintiff claim state law or policy which interfere with or are contrary to the U.S. Constitution are invalid.

Plaintiff claim that each named defendant became a willing participant under a single plan the nature and general scope of which was known to each defendant responsible for its consequences did share a tacit understanding that an illicit agreement existed because of its adverse effects upon an identifiable group which Plaintiff is a member for the purpose of forcing inmate attendance in federally funded programs against his will.

PLAINTIFF HAS BEEN AND WILL CONTINUE TO BE
IRREPARABLY INJURED BY DEFENDANTS ACTIONS UNLESS THIS
COURT GRANT THE RELIEF WHICH HE SEEK _____

_____ RELIEF _____

- A) DECLARATORY JUDGEMENT THAT THE AMENDED POLICY DC-ADM 816 IS UNCONSTITUTIONAL UNDER ARTICLE I §9 CL 3 AND THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION.
- B) A PRELIMINARY AND PERMANENT INJUNCTION PROHIBITING THE DEFENDANTS FROM COMPELLING PLAINTIFF TO PARTICIPATE IN PROGRAM AGAINST HIS WILL.
- C) COMPENSATORY DAMAGES FOR DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS IN AMOUNT OF \$5000 FROM EACH NAMED DEFENDANT, WITH THE RETURN OF HIS ALLOWANCE EFFECTIVE FROM AUG. 21/2000.
- D) PUNITIVE DAMAGES IN AMOUNT OF \$10000 FROM EACH NAMED DEFENDANT.
- E) A JURY TRIAL ON ALL FACTS TRIABLE BY JURY AND SUCH OTHER RELIEF DEEMED PROPER AND EQUITABLE.
- F) COST OF THIS ACTION.

PLAINTIFF DECLARES UNDER PENALTY OF PERJURY THAT ALL OF THE ABOVE FACTS, STATEMENTS AND CLAIMS ARE TRUE AND CORRECT.

DATED 4/16/001

Joseph F. Fuller

1005 S - YAM

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH FIDTLER,

Plaintiff,

v.

PA DEPARTMENT OF CORRECTIONS,
CHARLES STROUP, KAREN ROGERS,
CHARLES MCCLOSKEY,
RAY SMITH,

Defendants

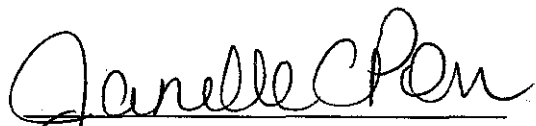
Civil Action No. _____

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Defendants' Notice of Removal upon the person(s) and in the manner indicated below.

Service by first-class mail
addressed as follows:

Joseph Fidler, CD-2250
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020


Janelle C. Porr
Clerk Typist 2

PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: May 30, 2001